IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Family Court Appeal No. 112 of 2006
with
Civil Application No.134 of 2006

Mrs.Bilquis Joseph Quraishi ..Appellant

vs.

Valamparambil J.Joseph ..Respondent

Shri V.C.Ghosalkar for appellant
Shri S.N.Acharya for respondent

CORAM: S.B.MHASE AND
Smt.V.K.TAHILRAMANI JJ.
8th January, 2007

P.C.

1. Heard the learned Counsel.

2. This matter can be disposed of with certain clarifications. It is to be noted that the petition no.A-362 of 1996 was filed by the present appellant Mrs.Bilquis Joseph Quraishi as against the respondent husband for restitution of conjugal rights. While claiming restitution of conjugal rights, the appellant/wife also claimed a joint ownership of flat no. C-4, Rishikesh II, Evershine Nagar, Malad (West), Mumbai. The appellant wife further claimed a declaration that she has a right to stay in the said flat and, therefore equally prayed for an injunction

restraining the respondent-husband, his agents servants and representatives from disposing of the said flat. Thus, in an application for restitution of conjugal rights, these prayers were made which show that restitution of conjugal right was claimed as an offspring of the matrimonial rights and obligation of the respondent husband and declaration in respect of the joint ownership of the flat and right to reside in the said flat, an injunction was claimed because the said flat, according to the appellant, was of joint ownership i.e. purchased out of the joint contribution of the husband and wife. In short, the prayers in respect of the property were for the proprietary rights independently of and aloof from the matrimonial rights of the parties. It is to be noted that the decree for restitution of conjugal rights has been granted. However, the prayers made by the appellant in respect of the flat have been rejected or dismissed and, therefore, while rejecting those prayers the Court directed in its order that the prayer for declaration of joint ownership and declaration to reside in the said flat and also of injunction restraining respondent-husband, his agents, servants and representatives etc. are

dismissed. This second part of dismissal is in respect of rejection of the proprietary rights of the wife in the said flat. However, this created an impression that as a result of denial of any right to reside in the said flat, even the decree for restitution of conjugal rights cannot be executed and, therefore, the wife has preferred this appeal making the grievance that if this order remains into force, it will not be possible to execute the decree for restitution of conjugal rights. We find that the argument is misconceived one. The wife's right to have restitution of conjugal right is a right which is the offspring of the marriage and, therefore, it is a right of association which is one of the consequences of the marriage. Marriage creates bundle of rights between the husband and wife. Out of them restitution of conjugal rights is one of the right and this right can be exercised by wife as against the respondent and in respect of the place which is recognised as a matrimonial home between the husband and wife. For execution of this right it is not necessary for the wife to have a proprietary right in the matrimonial home. Even if she is not having any proprietary rights in the matrimonial home she is entitled

to stay in the matrimonial home because she is married with the husband in the present case with the respondent. Therefore, this right is independent of the proprietary right and can be exercised by the wife as against the respondent even though she is not the owner of the matrimonial home and from that angle the decree for restitution of conjugal rights as has been passed by the Family Court is the executable decree. Denial of prayers in respect of the joint ownership of flat No.C-4 and declaration to reside in the said flat and so also injunction will not preclude the wife from executing the decree of restitution of conjugal right and to stay along with the husband in execution of the decree of restitution of conjugal rights even in the premises namely flat No.C-4, Rishikesh II, Evershine Nagar, Malad, Mumbai if it happens to be the matrimonial home. We make it clear that whenever the decree for restitution of conjugal right is to be executed as against the husband the wife is entitled to stay with the husband in the premises where the husband is residing so as to make it a matrimonial home and for that purpose it is not necessary for the wife to take the proprietary rights in those premises. Net result of the order as

has been passed by the Family Court is that only the joint ownership in respect of a particular flat No.C-4, Rishikesh II, Evershine Nagar,Malad, Mumbai has been denied. In short, the ownership of the said flat and residence in the said flat in ownership and injunction claimed as an owner of the property has been denied but access of the wife in the said premises as wife of the respondent so as to execute the decree for restitution of conjugal rights is not denied by the Family Court. Thus, interpreted the anomaly stands explained. The Family Court while executing the order passed in petition No.A-362 of 1996 shall bear this in mind and execute the decree. The learned Counsel Shri Ghosalkar who appears for the appellant wife state that this explanation satisfies the appellant-wife and, therefore, does not want to proceed with the appeal. Therefore, the appeal is hereby disposed of since the grievance of the appellant is redressed by the above clarification and explanation which we have offered in the above paras of the order.

3. So far as the other petition No.A-1172 of 1996 is concerned, it was a petition for divorce by the respondent-husband. However,

that has been dismissed by the Family Court on merits and there is no challenge to that order in the present Family Court Appeal.

4. In view of the above order disposing of the Family Court Appeal Civil Application No.134 of 2006 does not survive and hence disposed of accordingly.

(Smt.V.K.TAHILRAMANI J.) **(S.B.MHASE J.)**